REMARKS

Applicant respectfully requests reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks.

Claims 1, 3-15, and 25 are pending in the application, with Claims 1, 11, and 25 being independent.

Claims 16-24 were previously withdrawn while preserving the right to include the subject matter recited therein in any continuation or divisional patent applications.

Claim 2 is canceled herein without prejudice to or disclaimer of the subject matter recited therein.

Claims 1, 3-5, 11-13, 15, and 25 are amended herein. Further amendments to the claims have been made to correct grammatical errors and other informalities found therein. Support for the claim amendments and additions can be found in the original disclosure. No new matter has been added. Favorable consideration is respectfully submitted.

NOTICE OF REFERENCES CITED IN THE OFFICE ACTION

Applicant respectfully notes that Wookey *et al.* (U.S. Patent Publication No. 2004/0001514; hereinafter, "Wookey"), which was cited in the Action in support of the rejections under 35 U.S.C. § 103(a), was not listed in the Notice of References Cited page of the Office Action. Accordingly, it is respectfully submitted that Wookey be entered into the official record with regard to the present application.

Although the specification was not explicitly objected to, the Action stated that the specification "includes terminology which is so different from that which is generally accepted in the art to which this invention pertains that a proper search of the prior art cannot be made" (Office Action, page 2). In particular, the Action specifically identified the terms "data structure," "transport," and "transport vehicle" (Office Action, pages 2-3). It is respectfully submitted that the Applicant may be its own lexicographer with regard to using particular claim terminology and defining its corresponding meaning in the specification.

For instance, Applicant respectfully refers the Examiner to at least MPEP §§ 2111.01 and 2173.01. MPEP § 2111.01 states that "[a]n applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s)." Further, MPEP § 2111.01 further states that "[a]ny special meaning assigned to a term 'must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.'"

Likewise, MPEP § 2173.01 states that "[a] fundamental principle contained in 35 U.S.C. 112, second paragraph is that applicants are their own lexicographers. They can define in the claims what they regard as their invention essentially in whatever terms they choose so long as any special meaning assigned to a term is clearly set forth in the specification."

Accordingly, even if it is argued that the terms "data structure," "transport", and/or "transport vehicle" "are different from that which is generally accepted in the art" (Office Action, page 2), to which Applicant respectfully disagrees, it is respectfully submitted that such terms are defined in the specification in at least paragraphs [0019] and [0020]. Therefore, Applicant respectfully requests that the claims be interpreted in light of the specification.

§ 112 SECOND PARAGRAPH REJECTIONS

Claims 11 and 25 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. More particularly, the Action asserts that the terms "a data structure" and "a data streaming protocol," which are each recited in Claims 11 and 25, should instead recite "the data structure" and "the data streaming protocol," respectively (Office Action, page 4). Further, with respect to Claim 25, the Action asserts that the term "a second size limit" is not supported by the specification. Applicant respectfully traverses the rejection. However, in spite of Applicant's traversal, without acquiescing to the propriety of the rejection, and for the sole purpose of expediting allowance of the present Application, Applicant hereby amends Claims 11 and 25 in the manner set forth above. Furthermore, as stated above, Examiner Pannala agreed that Claims 11 and 25, as amended as proposed during the interview, overcome the present rejection. Nevertheless, Applicant hereby submits its remarks.

With respect to Claim 25, however, Applicant respectfully submits that "a data structure" and "a data streaming protocol" are recited properly. It is submitted that each

time the aforementioned terms are subsequently recited in Claim 25, the terms are preceded by the word "the." Accordingly, Applicant respectfully requests that the rejection be reconsidered and withdrawn.

Furthermore, Applicant respectfully disagrees that the specification fails to define or specify a second predetermined size limit, as presently recited in Claim 25. For instance, the specification, in at least paragraphs [0035] and [0041], discloses a "predetermined limit." Further, although Claim 25 recites "a second predetermined size limit," Applicant respectfully submits that one of ordinary skill in the art would understand that the "predetermined size limit" could be generated twice, thus resulting in a first predetermined size limit and a second predetermined size limit. Accordingly, for at least the reasons set forth above, Applicant respectfully requests that the rejection under 35 U.S.C. § 112, second paragraph, be reconsidered and withdrawn.

§ 101 REJECTIONS

Claims 1-10 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant respectfully traverses the rejection. However, in spite of Applicant's traversal, without acquiescing to the propriety of the rejection, and for the sole purpose of expediting allowance of the present application, Applicant hereby amends independent Claim 1 in the manner set forth above. Further, as stated above, Examiner Pannala agreed that Claim 1, as amended as proposed during the interview, overcomes the present rejection. Accordingly, Applicant respectfully submits that independent Claim 1, and all claims which depend thereon (Claims 2-10), recite statutory

subject matter and further requests that the rejection be reconsidered and withdrawn.

<u>§ 103 REJECTIONS</u>

Claims **1-15 and 25** were rejected under **35 U.S.C. § 103(a)** as being obvious over Walker (U.S. Patent No. 6,665,729; hereinafter, "Walker") in view of Wookey. Applicant respectfully traverses the rejection and further requests that the rejection be reconsidered and withdrawn. However, in spite of Applicant's traversal, without acquiescing to the propriety of the rejection, and for the sole purpose of expediting allowance of the present application, Applicant hereby amends independent Claims 1, 11, and 25 in the manner set forth above. Applicant respectfully notes that Claim 2 has been canceled without prejudice to or disclaimer of the subject matter recited therein, thus obviating the rejection with respect to Claim 2.

Applicant respectfully submits that both Walker and Wookey neither teach nor suggest at least the following features recited in independent Claim 1:

> determining a size of a data structure;

> selecting a data streaming protocol when the size exceeds a predetermined limit and sending, to a client computing device, data of the data structure consistent with the streaming protocol, the selecting comprising serializing one or more data structures into a data transmission unit terminating with a delimiting code; and

> selecting a buffered data protocol when the size does not exceed the predetermined limit and sending, to a client computing device, data of the data structure consistent with the buffered protocol when a predetermined time interval has elapsed.

More particularly, it is submitted that neither reference teaches or suggests "determining a size of a data structure," as presently recited. The Action asserts that Walker (at Col. 4, lines 50-54) teaches the foregoing recitation (Office Action, page 6). Applicant

respectfully disagrees.

Applicant submits that the portion of Walker cited in the Action teaches that a client may make a request to a server for data from a file stored at the server (Col. 4, lines 50-54). Furthermore, the request may be for a particular amount of data, such as "8 kilobytes of data" (Col. 4, lines 52-53). However, despite the foregoing teachings, Walker neither teaches nor suggests "determining a size of a data structure," as presently recited in Claim 1. Although Walker teaches requesting a particular amount of data from a server, Walker simply fails to teach determining a size of a data structure, as presently recited. Applicant respectfully submits that affirmatively determining a size of a data structure is distinct from a server merely fulfilling a client request for a predetermined amount of data. Accordingly, for at least the foregoing reasons, independent Claim 1 is patentable over Walker.

Furthermore, it is respectfully submitted that neither Walker nor Wookey teaches or suggests "selecting a data streaming protocol when the size exceeds a predetermined limit," as presently recited. The Action states that Wookey teaches the foregoing recitation in paragraph [0297]. Paragraph [0297] of Wookey states:

> [0297] More specifically, a short message can contain monitoring data, such as events or alarms, a response to a message sent in the other direction, bulk data transfer request or response infrastructure control message or other data.

That is, Wookey teaches that information can be exchanged between multiple components using a bulk transfer request. Yet, Applicant submits that Wookey is completely silent with respect to "selecting a data streaming protocol <u>when the size exceeds a predetermined limit</u>" (emphasis added). In fact, Wookey merely teaches a bulk

data transfer request without specifying what a bulk transfer request entails. Therefore, Applicant respectfully submits that independent Claim 1 is also patentable over Wookey.

Further, Applicant hereby amends independent Claim 1 to recite "the selecting comprising serializing one or more data structures into a data transmission unit terminating with a delimiting code," which was previously recited in canceled dependent Claim 2. The Action asserts that Walker teaches the foregoing recitation at Col. 3, lines 56-59 (Office Action, page 7). Applicant respectfully disagrees. It is submitted that the foregoing portion of Walker teaches that protocols associated with each layer of a network are able to communicate with one another through the hierarchy of layers (Col. 3, lines 55-57). For instance, Walker teaches that a protocol located on a first layer of the network can communicate with a protocol on another layer directly above or below it (Col. 3, lines 57-60). However, Claim 1 instead recites serializing one or more data structures into a data transmission unit terminating with a delimiting code. Further still, Applicant submits that teaching that layers of a network may communicate with one another in no way relates to serializing one or more data structures into a data transmission unit terminating with a delimiting code. Accordingly, it is respectfully submitted that Walker does not teach, or even suggest, the above recitation.

Lastly, Applicant respectfully submits that both Walker and Wookey fail to teach or suggest "selecting a buffered data protocol when the size does not exceed the predetermined limit and sending," as presently recited in Claim 1. As stated above, Wookey fails to teach "when the size exceeds a predetermined limit," as presently recited. Likewise, for at least the reasons set forth above, Applicant submits that both

Walker and Wookey also do not teach or suggest "when the size does not exceed the predetermined limit" as presently recited.

Moreover, the Action asserts that Walker (at Col. 1, lines 49-53 and Col. 4, lines 50-67) teaches selecting a buffered data protocol and sending data of the data structure consistent with the buffered protocol, as presently recited (Office Action, page 6). Applicant respectfully disagrees. Walker teaches that choosing whether a system operates with a stream-based protocol or a transaction-based protocol determines how data will be transmitted from one location to another within a network (Col. 1, lines 49-53). Further, Walker teaches a process of transmitting data from a server to a client using a TCP protocol (Col. 4, lines 50-67). However, neither of the two aforementioned portions in Walker teach, or even suggest, selecting <u>a buffered data protocol</u> or sending data of the data structure consistent with <u>the buffered protocol</u>, as presently recited (emphasis added).

Furthermore, Applicant respectfully submits that Walker teaches away from using a buffered data protocol. For instance, in the context of increasing the efficiency of network communication when a transaction-based protocol is employed in conjunction with a stream-based protocol, Walker states that:

> This efficiency results from decrease in the number of acknowledgement signals that are sent from a client to a server, as well as <u>elimination of the latencies associated with the buffering of data at the server</u>. (emphasis added)

(Col. 6, lines 50-54). In other words , Walker teaches that latencies are created when data is buffered at the server. Accordingly, because Claim 1 recites selecting and sending data with a buffered data protocol, it is respectfully submitted that Walker teaches away from

the foregoing recitation. Therefore, for at least the above reasons with respect to independent Claim 1, Applicant submits that Claim 1 is patentable over both Walker and Wookey.

Moreover, Walker and Wookey do not remedy the deficiencies in one another noted above with respect to independent Claim 1, nor does the rejection make any arguments to that effect. Accordingly, Claim 1 is patentable over Walker and Wookey, both singularly and in combination with one another.

Furthermore, Independent Claims 11 and 25 recite features similar to those discussed above with regard to Independent Claim 1. Accordingly, Applicant respectfully submits that independent Claims 11 and 25 are also patentable over Walker and Wookey, both singularly and in combination with one another, for at least the same reasons. Additionally, with respect to independent Claim 25, for at least the reasons set forth above regarding the recited "a predetermined limit," it is respectfully submitted that Walker and Wookey also fail to teach or suggest "sending data of the data structure consistent with the buffered protocol when the data structure reaches a second predetermined size limit and system resources are available" (emphasis added), as presently recited.

Further, without any teaching or suggestion as to how or even why the descriptions in Walker may be modified, it is further submitted that one of ordinary skill would not have been motivated to modify the implementations described by Walker with Wookey, nor would it have been obvious to try. Further, as Walker fails to teach or suggest several features recited in independent Claims 1, 11, and 25 and Wookey fails to

remedy the deficiencies in Walker set forth above, Applicant respectfully submits that one of ordinary skill in the art would not have sought to modify Walker using such a reference. Likewise, as the references noted above lack several limitations of independent Claims 1, 11, and 25, it would not have been obvious to try, at the time of the invention, to make the inventions as presently claimed.

Thus, Walker and Wookey, whether taken alone or in combination (assuming for the sake of argument that they can be combined), fail to disclose or suggest the recitations of independent Claims 1, 11, and 25. Accordingly, Applicant respectfully submits that independent Claims 1, 11, and 25 are patentable over the proposed combination of references. Furthermore, dependent Claims 3-10 and 12-15 are patentable by virtue of their dependency on independent Claims 1 and 11, as well as for the additional features that each claim recites. Applicant also respectfully requests individual consideration of each dependent claim.

Therefore, for at least the foregoing reasons, it is respectfully submitted that Claims 1, 3-15, and 25 are not obvious over Walker in view of Wookey, and therefore, the present rejections under 35 U.S.C. § 103(a) should be reconsidered and withdrawn.

For at least the foregoing reasons, it is respectfully submitted that Claims 1, 3-15, and 25 are in condition for allowance. Applicant respectfully requests reconsideration and withdrawal of the rejections and an early notice of allowance.

The arguments and amendments presented herein were necessitated by the most recent Office Action and the interview between Applicant's representative and Examiner Pannala dated February 4, 2009, and because Applicant earnestly believed that the claims were in condition for allowance at the time of filing the previous response. **If any issue remains unresolved that would prevent allowance of this case, Applicant requests that the Examiner contact the undersigned attorney to resolve the issue**.

Respectfully Submitted,

Lee & Hayes, PLLC

Dated: 2/12/2009

By: _____

Robert C. Peck
Reg. No. 56826
Brett J. Schlameus
Reg. No. 60827
206-876-6022